Remarks

Entry of this Amendment and allowance of all pending claims are respectfully requested. Claims 1, 3-10, 30, 32-39 & 63 remain pending.

Initially, Applicants cancel herein withdrawn claims 11-29, 41-62 & 64-66 without prejudice to the re-filing thereof in one or more divisional applications. Based on these claim cancellations, withdrawal of the 35 U.S.C. §112, second paragraph, rejection to claims 1-66 is respectfully requested.

By this paper, independent claims 1, 30 & 63 are amended to address the 35 U.S.C. §101 rejection stated in the Office Action. Specifically, claims 1 & 30 are amended to specify that the method and system are computer-implemented, while claim 63 is amended to specify that the at least one program storage device is readable by a computer, and tangibly embodies at least one program of instructions executable by the computer to perform the recited method. Further, each of these independent claims is amended to specify that the collecting is performed by a monitoring server application, responsive to a request by a client monitor application, and that the employing or displaying are performed by the client monitor application. Support for these amendments can be found throughout the application as filed. For example, reference paragraphs [0023] & [0030] of the specification. Based on these amendments, reconsideration and withdrawal of the 35 U.S.C. §101 rejection is respectfully requested.

Independent claims 1, 30 & 63 are further amended to specify additional aspects of Applicants' recited invention. In each of these independent claims, Applicants recite that the JobTracker information includes jobs data on *each job having a user selected, tracked job state*. Support for this amendment can be found throughout the application as filed. For example, reference paragraph [0023] of the specification. Based on this amendment, dependent claims 2 & 31 are canceled, while the dependency of claims 3 & 32 is amended. No new matter is added to the application by any amendment presented.

In the Office Action, claims 1-10, 30-40 & 63 were rejected under 35 U.S.C. §103 as being unpatentable over Silva et al. (U.S. Patent No. 6,104,760; hereinafter Silva) in view of Freund (U.S. Patent No. 6,076,174; hereinafter Freund). This rejection is respectfully, but most

strenuously, traversed to any extent deemed applicable to the claims presented herewith, and reconsideration thereof is requested.

An "obviousness" determination requires an evaluation of whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art. In evaluating claimed subject matter as a whole, the Federal Circuit has expressly mandated that functional claim language be considered in evaluating a claim relative to the prior art. Applicants respectfully submit that the application of these standards to the independent claims presented leads to the conclusion that the recited subject matter would not have been obvious to one of ordinary skill in the art based on the applied patents. Specifically, Applicants request reconsideration and withdrawal of the obviousness rejection on the following grounds: (1) the Office Action has misinterpreted the teachings of Silva and Freund, thus voiding the basis for the rejection; (2) the combination of the documents fails to disclose a *prima facie* case of obviousness against Applicants' claimed invention; (3) the documents themselves lack any teaching, suggestion or incentive for their further modification as necessary to achieve Applicants' recited invention; and (4) the combination, to the extent characterized in the Office Action, is a hindsight reconstruction of the claimed invention using Applicants' own disclosed subject matter.

Applicants' invention is directed, in one aspect, to a computer-implemented facility for monitoring jobs in a queue of a distributed system. The method includes: responsive to a request by a client monitor application, collecting by a monitoring server application jobs information on jobs in a queue of a distributed system, the jobs information including JobTracker information, the JobTracker information including *jobs data on each job having a user selected, tracked job state, and, for each job having the tracked job state, a time of entry in the tracked job state*; and employing or displaying, by the client monitor application, the jobs information on the jobs in the queue. Applicants respectfully submit that numerous aspects of their method of monitoring jobs are simply not taught or suggested by Silva and/or Freund.

Silva describes a *scheduling method and apparatus* for a distributed automated testing system. The method and apparatus automatically schedule and allocate jobs to test machines. A user interface generates jobs in response to selections by the users and outputs the jobs onto the network in the form of data packets. A plurality of test machines are in communication with the

dispatcher machines via the network. When a test machine is available to process a job, the available test machine generates availability data packets which indicate that the test machine is available to process a job. These availability data packets are sent over the network and routed to a dispatcher machine designated by the address contained in the availability data packet. Upon receiving an availability data packet, the dispatcher machine determines whether one or more of the jobs on the list of jobs maintained by the dispatcher machine is capable of being performed by the available test machine. If one or more the jobs listed are capable of being performed by the available test machine, the dispatcher machine instructs the test machine to perform one of the jobs, preferably the job having the highest priority. (See Abstract of Silva.)

Initially, Applicants respectfully traverse the characterizations of the teachings of Silva stated in the Office Action. The Office Action states at the bottom of page 5 that Silva "... disclose method for testing process jobs by collecting packet information thereon substantially as claimed. The differences between the above and the claimed invention is the use of specific terminology." These characterizations of Silva and the applicability thereof to Applicants' recited invention are respectfully traversed.

In Applicants' claimed invention, the JobTracker information is recited in each independent claim to include jobs data on each job having a tracked job state. Further, this JobTracker information is recited to include for each job having the tracked job state, a time of entering the tracked job state. The Office Action presents no discussion of these characterizations, and Applicants respectfully submit that there is no teaching or suggestion thereof in Silva. *Silva does not discuss tracking a job state per se, let alone recording a time of entry of each job into the tracked job state.*

Additionally, as amended, the independent claims recite that the JobTracker information includes *jobs data on each job having a user selected, tracked job state.* No similar functionality is disclosed by Silva (or Freund).

Freund is cited in the Office Action at page 6 in an apparent acknowledgement that Silva does not teach or suggest all of Applicants' recited functionality. The Office Action indicates that Freund "... show performance characteristics of a job in real time." This characterization of the teachings of Freund is respectfully traversed. FIG. 2 of Freund refers to "performance characteristics database 206". At column 3, line 22 – column 4, line 13, Freund teaches that the

performance characteristics database 206 contains a set of machine data which includes site objects, machine objects, model objects, model machine objects, and override objects, each of which is defined at columns 3 & 4 of Freund. In reviewing these definitions, Applicants respectfully submit that it is clear that the material at issue relates to the performance characteristics of the machine itself, and not to any job being executed by the machine. Based on this, Applicants respectfully submit that the Office Action mischaracterizes the teachings of Freund in asserting that Freund teaches monitoring performance characteristics on a job in real time.

For the above reasons, Applicants respectfully request reconsideration and withdrawal of the obviousness rejection to the independent claims presented herewith based upon Silva and Freund.

Further, it is respectfully submitted that the Office Action fails to state a *prima facie* case of obviousness against Applicants' independent claims, and particularly against the independent claims as amended. A careful reading of pages 5 & 6 of the Office Action and the Silva and Freund patents fails to uncover any teaching or suggestion of a facility as recited by Applicants in the independent claims wherein the collected jobs information on jobs in a queue of a distributed system includes jobs data on each job having a tracked job state, and for each job having the tracked job state, a time of entering the tracked job state. Since the Office Action does not address this characterization, Applicants respectfully submit that the Office Action fails to state a *prima facie* case of obviousness.

Still further, Applicants respectfully submit that as amended, the independent claims presented clearly patentably distinguish over the known art. In Applicants' invention, the collection of jobs information is such that the JobTracker information includes jobs data on each job having a user selected, tracked job state, and for each job having the user selected, tracked job state, a time of entering the tracked job state. As recited in dependent claims 3 & 32, the tracked job state may be selected by a user from a predefined list of job states, including, a list containing the states of "waiting", "running", "pending" and "held". Thus, in accordance with Applicants' invention, a user can select a tracked job state comprising "held", for example, and the facility automatically collects jobs information on each job in the queue of the distributed system which is in the "held" job state, and for each job in the "held" job state, provides a time

that the job entered the "held" job state. Clearly, the Silva and Freund patents provide no teaching or suggestion of such a facility.

Still further, Applicants traverse the combinability of Silva and Freund to the extent that the Office Action alleges that the combination teaches the functionality of Applicants' recited invention, and in particular, Applicants' characterization that the collected jobs information includes JobTracker information which includes jobs data on each job having a user selected, tracked job state, and for each user selected, tracked job state, a time of entering the tracked job state. Without acquiescing to the rationale for combining the documents, Applicants note that if Freund is combined with Silva as proposed, their recited invention would still not have been taught or suggested by the combination. Neither Silva nor Freund discloses any process for collecting job state information on each job having a user selected, tracked job state *per se*. Further, neither patent provides such information in addition to a time that each job in the tracked job state entered the tracked job state. Thus, Applicants respectfully submit that the combination of Silva and Freund would not teach one skilled in the art their recited functionality for monitoring jobs in a queue of a distributed system. As such, reconsideration and withdrawal of the obviousness rejection is requested.

Yet further, the characterizations of the teachings of Silva and Freund in the Office Action provide no technical basis outside that contained in Applicants' own specification. The characterizations of the teachings of Silva and Freund are merely broad statements regarding the alleged applicability of Silva and Freund to Applicants' recited invention. As recited in each independent claim, Applicants are not merely monitoring performance characteristics as alleged in the Office Action. Rather, Applicants have a specific process for tracking specific jobs in a queue of a distributed system; that is, jobs that are in a user selected, tracked job state. And, for each of these jobs, Applicants recite functionality for providing a time that the job entered the tracked job state. No similar functionality is believed taught or suggested by the known art.

The consistent criterion for the determination of obviousness is whether the art would have suggested to one of ordinary skill in the art that the claimed invention should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art. The suggestion and the expectation of success must be found in the prior art, not in the Applicants' disclosure. In re Dow Chemical Company, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1998) (multiple

citations omitted). The alleged combination at issue simply is characterized broadly relative to the language of Applicants' invention, rather than an identified basis in the prior art for achieving the modifications necessary to arrive at Applicants' invention, in violation of this well-known principle. This is yet another, independent reason why the current invention is not obvious over the applied art.

In summary, Applicants traverse the rejection to the independent claims based on the misinterpretation of the Silva and Freund patents; the lack of a *prima facie* case of obviousness against Applicants' claimed invention based thereon; the lack of a teaching or a suggestion of their invention in the combination; and the lack of an actual teaching, suggestion or incentive in the art for the modifications necessary to achieve their invention.

For at least the above reasons, Applicants respectfully submit that the independent claims patentably distinguish over the teachings of Silva and Freund. Reconsideration and withdrawal of the obviousness rejection based thereon is therefore respectfully requested.

The dependent claims are believed allowable for the same reasons as the independent claims, as well as for their own additional characterizations.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

The application is believed to be in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

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